



ARKANSAS TOBACCO CONTROL



Asa Hutchinson
Governor

Steve Goode
Director

BOARD MEETING MINUTES AUGUST 4, 2016

The Arkansas Tobacco Control Board met on Thursday, August 4, 2016 for its monthly meeting in the Main Street Mall Building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 119. There were 7 Board members present. Those attending were Steve Lightle filling in as Chairman, Mr. Sam Stathakis Jr, Dr. Shabbir Dharamsey, Ms. Carol Dyer, Dr. J.J. Lacey Jr., Mr. Jay Hickey and Dr. Brad Mayfield.

Chairman Steve Lightle began the meeting with a "Welcome" to those attending. He then introduced Mr. Charles Moulton serving as the Hearing Officer and Mrs. Kristy Rooney serving as Court Reporter. Mr. Lightle then proceeded with the meeting.

Mr. Lightle asked for a motion to approve the board meeting minutes from June 2, 2016.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

The default list dated June 2, 2016 was presented and read aloud by Attorney Roland Darrow.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

The Hearing Officer then opened the Disciplinary Hearings and asked Attorney Roland Darrow, to present the following.

CONSENT ORDERS

**IN RE: LAMRK HOBBS and
HOBB'S TURNROW LIQUOR
ARKANSAS CITY, ARKANSAS
PERMIT NO. 02724-01**

NO. 2016-073

ATC Attorney Darrow addressed the Board and explained that he had been contacted by Mr. Hobbs' attorney, Stephan Morley, who stated that he had been directed by his client to withdraw his client's request for a hearing and enter a plea of no contest to the violations charged. ATC Attorney Darrow then requested the Board to find the Respondent guilty of selling on a suspended permit and levy a fine of \$2,500.00 and a 10 day permit suspension.

A motion was made to find the Respondent guilty and levy the suggested penalty. The motion was seconded and passed with 7 yes votes and 1 absent.

**IN RE: ALEC B. SHORE and
SHORE'S VAPE CAVE, LLC
JONESBORO, ARKANSAS
PERMIT NO. 81341-01**

NO. 2016-090

On February 25, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents had purchased e-liquids from an unlicensed dealer.

The Respondents are fined \$500.00 as a civil penalty for the violation of A.C.A. § 26-57-228, Respondents' retail permit is suspended for a period of 10 days with the 10 day suspension held in abeyance and dismissed if Respondents complete a probation period of 18 months from the date of this Order with Respondents having no violations of A.C.A. § 26-57-213, § 26-57-228 or § 26-57-245.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN THE MATTER OF
JAMES MICHAEL COX, and
WEND-XX OF AR, INC., Mena, Arkansas
PERMIT NO. 06773-01**

CASE NO. 2016-236

On May 12, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty, and all retail employees of Wend-XX of AR, Inc. of Mena, Arkansas must attend an ATC Merchant Education Training within six (6) months of the date of this Order.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: KONG RAI KIM and
ARKANSAS GIANT KONG, INC. DBA FAST N LOW #2
TEXARKANA, ARKANSAS
PERMIT NO. 01391-03**

NO. 2015-412

On October 22, 2015, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent investigation, it was discovered that Respondents had purchased and then possessed tobacco products for which the Arkansas tobacco excise tax had not been paid. Respondents had also failed to maintain invoices as required by law for the untaxed tobacco they possessed.

The Respondents are fined \$11,100.00 as a civil penalty for the violation of A.C.A. § 26-57-245, Respondents' retail permit is suspended for a period of 15 days and the confiscated tobacco products are ordered to be destroyed; Respondents are fined \$1,000.00 as a civil penalty and is suspended for 15 days for the violation of A.C.A. § 26-57-213. Respondents' total fine is \$12,100.00 and the suspensions shall run concurrently.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN RE: SIRAJ HAMEED dba
QUICK STOP
JONESBORO, ARKANSAS
PERMIT NO. 04044-03**

NO. 2016-112

On February 25, 2016, a store inspection was conducted on Respondents' business premises and during the course of the inspection and subsequent

investigation, it was discovered that Respondents had purchased e-liquids from an unlicensed dealer.

The Respondents are fined \$500.00 as a civil penalty for the violation of A.C.A. § 26-57-228, Respondents' retail permit is suspended for a period of 10 days with the 10 day suspension held in abeyance and dismissed if Respondents complete a probation period of 18 months from the date of this Order with Respondents having no violations.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

**IN THE MATTER OF
JACKIE R. MCCLURE, and
JORDON'S KWICK STOP #41, BROOKLAND, Arkansas
PERMIT NO. 13301-01**

CASE NO. 2016-257

On June 1, 2016, Respondents' clerk sold a tobacco product to a minor for a second time within forty-eight months, in violation of A.C.A. § 5-27-227(a)(1).

The Respondents shall be fined \$250.00 as a civil penalty, and all retail employees of Jordan's Kwick Stop #41 of Brookland, Arkansas must attend an ATC Merchant Education Training within six (6) months of the date of this Order.

The board shall retain jurisdiction of this matter for purposes of implementing and enforcing this Consent Order, and that Respondents' failure to comply with any provision herein shall constitute a violation of a Board's Order for which the Board may impose additional disciplinary action.

A motion was made to approve the consent order and was passed with 7 yes votes and 1 absent.

FULL HEARING

**IN RE: MD IBNUL HASAN and
RIM INVESTMENT LCC.
PINE BLUFF, AR**

CASE NO. 2016-0132

On March 21, 2016, an investigation was performed on said business and during the course of said investigation, the permit holder was found to be selling and/or advertising cigarettes below the state mandated minimum price.

It was determined by the board to move this hearing to next month's hearing as a result of the owner not being present and not giving documents allowing the manager of the store to represent the business.

The motion passed with 7 yes votes and 1 absent.

**IN RE: RICKY JONES and
RICK'S EXPRESS INC.
LAKE VILLAGE, AR**

CASE NO. 2016-0213

On April 27, 2016, a compliance check was performed on said business and during the course of said compliance check, a tobacco product was sold to a minor.

Chairman Steve Lightle asked if there was anyone preset for Rick's Express. Mr. Ricky Jones and his manager Ron Bettis came forward.

Mr. Lightle then addressed attorney Roland Darrow and asked for him to call his first witness. He then called Agent Tad Huntsman to the stand. Agent Huntsman then began his testimony. He stated that he was at the store for a compliance re-check. He sent in a 16 year old male to try and make a purchase of tobacco product. The minor then went up to the counter and asked the cashier for a black-in-mild cigar. He handed his wallet with ID in it to the cashier. The cashier opened the wallet and looked at the ID. She did not take the ID out but left it in the wallet. She then began to question the minor about his ID but in the end continued on the sale and the minor came back out to Agent Huntsman's vehicle. At that time, Agent Huntsman re-entered the store, showed his badge and let the cashier know that he was an agent with Arkansas Tobacco Control and that she was being cited for selling to a minor. He asked the cashier why the sale took place and the cashier's response was that she was new and had only been at the store for two days.

Attorney Darrow then called to the stand Mandy Miller, Arkansas Tobacco Control Training Coordinator. Mr. Darrow asked Mrs. Miller if the store in question has attended any training classes. She stated that they had attended trainings in February, April, May and July of this year. She also stated that they are still in the final stages of their certified training program. She said that after being in one of the store locations personally, that she noticed and observed that they are doing all they can with the policies and procedures they have put in place. She then further stated that they have done and are doing more than most store's do in her opinion.

Mr. Lightle then address the defendant and let him know that he was his turn to give his testimony. Mr. Rickey Jones then addressed the board. He stated that he in no way was he in dispute that the cashier made the sale to the minor. He stated that they are heavily trained to check the ID before making a sale and that they have to enter in the date of birth into the POS system they have in place. They are trained that if the ID is vertical, then they are not to make the sale. He stated that when they went back to the register to further investigate

themselves, they found that during the sale the cashier put in her date of birth in order for the POS system to clear her to complete the sale. They also send in their own minors from time to time to see if their cashiers will sale to the minor as well as constantly check the video footage of the day. Mr. Ron Bettis then commented on the fact that the cashier was hired after the April training with Mandy Miller and that she had been in the store longer than the two days she had told agent Huntsman. Mr. Bettis stated that she was not with the store long enough to make it to the next training class that Mandy Miller was holding. He also stated that he has gone to the corporate office with the complaint about how the cashiers can override the system by putting in their date of birth to complete a sale. He explained to them that they needed the updated version of the system that will prevent this from happening. He stated that they have not heard back from their corporate office yet with a decision.

Mr. Lughtle asked Attorney Darrow if he had anything for closing and he said no. He then addressed Mr. Jones and asked if he wanted to add anything for closing. Mr. Jones asked the board for leniency and to give them a larger fine and no suspension. Mr. Lightle then addressed the board for deliberation on a motion.

A motion was made to fine the respondents \$1,000 with a 7 day suspension, with \$500 and 3 days of the fine and suspension to be suspended pending no other violations within 24 months or 2 years plus Merchant Education Training to be completed within 6 months of the hearing date.

The motion passed with 6 yes votes and 2 absent.

LENIENCY HEARING OR BOARD MANDATED HEARINGS

**IN RE: DAULAT Z. KHETANI and
DIAMOND USA LLC. DBA VALERO SUPERSTOP #466
HOPE, AR**

CASE NO. 2016-0219

On April 21, 2016, an investigation was performed on said business and during the course of said investigation, respondents were found to be selling tobacco products during a 5 day period when their permit was suspended.

Chairman Steve Lightle addressed Attorney Roland Darrow and asked for him to call his first witness. Mr. Darrow called Agent Linda Card to the stand. Agent Card addressed the board and gave a brief testimony. She stated that she was at the above store location to conduct a store suspension check to make sure they were not selling on their suspended license. Agent Card said that she did not see any signs that stated they were serving a suspension and could not sell tobacco product at the time. She went inside the store to try and make a purchase herself. She stated that she was able to purchase tobacco product and at that time she informed the cashier that she was an agent with Arkansas

Tobacco Control and show the cashier her badge. She also stated to the cashier that she was being cited for selling tobacco product on a suspended license. Mr. Lightle asked Agent Card if she had any further testimony to present and she said no.

Mr. Lightle then addressed the defendant, Mrs. Daultat Khetani, and explained that it was her time to give testimony. Mrs. Khetani addressed the board and said that she in no way was contesting the fact that the store sold tobacco while on a suspended license. She was there to ask leniency because she was not made aware that they had been mailed a letter stating when their suspension was to be served. She said that the manager is to give them the mail when they come to the store and she did not give them anything. She stated that she called Arkansas Tobacco Control whenever the manager gave them the citation that was issued. She stated that she spoke with a woman by the name of Pat and let her know that she never got a letter from here about the suspension. That is when Pat e-mailed a copy of the letter to her and she stated from that day until the board meeting that they had not been selling which was a total of two days.

Mr. Lightle asked Mrs. Khetani if she had anything else she would like to add in closing before the matter went into deliberation. Mrs. Khetani stated again that they were not there to contest what had happened but to ask the board for leniency on the suspension and thanked the board for hearing their case.

A motion was made to fine the respondents \$500 with a 5 day suspension.

The motion passed with 5 yes votes and 3 absent.

Deputy Director Sled gave a brief update on the Enforcement division activities and compliance check rates. Said everything was going well and provided a graph chart for the board to view. He also mentioned to the board that there had been an ongoing criminal investigation that the Arkansas Tobacco Control agents had assisted with that has finally resulted in the arrest and felony charging of the individual.

Deputy Director Larry Owens addressed the board and gave them a brief update on the FDA side of the agency. He stated that all is going well and that their fiscal end of the year will end in September. He stated they are right on track. He also wanted the board to know that as of Monday, August 8th, FDA would begin checking vapor stores in the state.

ADJOURNMENT

In closing, Mr. Lightle announced the next Board Meeting will be September 1, 2016, and then the meeting was adjourned.

Minutes prepared by

June 10, 2016

Christi Harper

Christi Harper